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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964.

No. 397

CYRIL T. FANECA, JR.,
Petitioner,

vs.

UNITED STATES OF AMERICA, NICHOLAS DE B. KATZENBACH, JAMES P. McSHANE, JOHN DOE and RICHARD ROE,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

EDWARD L. CATES,
CARTER AND MITCHELL,
P. O. Box 2216,
Jackson, Mississippi,
Attorneys for Petitioner.

E. L. MERTENHALL, INC., 1108 Oak Street, Kansas City, Mo. 64106, HArrison 1-3030

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Comes now the Petitioner, CYRIL T. FANECA, JR., an adult resident citizen of the State of Mississippi, and prays that a Writ Certiorari be issued to review the Final Judgment entered by the United States Court of Appeals for the Fifth Circuit on June 1, 1964.

CITATIONS TO ORDERS BELOW

A. (1) Final orders of the United States Court of Appeals for the Fifth Circuit, not reported, but set forth in Appendix, attached hereto as Exhibit "A", entered on June 1, 1964, in this suit. (2) Final orders of the United States Court of Appeals for the Fifth Circuit, not reported, in the companion case, and in which part of the opinion bears to this suit and petition, *Virgil Norton, Virgil Wesley, and James Chapman* v. *James P. McShane et al.*, June 1, 1964, in No. 20722, the United States Court of Appeals for the Fifth Circuit, not reported, but set forth in the Appendix and attached hereto as Exhibit "B".

B. Final orders of the United States District Court for the Southern District of Mississippi, not reported, but set forth in the Appendix, attached hereto as Exhibit "C"

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

A. Whether the United States under the Federal Torts Claim Act (28 U.S.C. 1346 (a) (2) (b), and individual respondents, Nicholas deB Katzenbach, James P. McShane, John Doe and Richard Roe, U. S. Officials, are liable in an action for damages for the wrongful and negligent acts of said individual U. S. Officials, acting within the scope of their employment, for the denial of the Petitioner's constitutional rights under the First Amendment, the Fifth Amendment, and Section 1, the Fourteenth Amendment to the United States Constitution.

B. Whether the individual United States officers, Nicholas deB Katzenbach, James P. McShane, John Doe and Richard Roe, are immune from suit, when acting under color of law, but acting wilifully, intentionally and purposely to deprive the Petitioner's constitutional rights under the Civil Rights Act (42 U.S.C. 1983), the First Amendment, the Fifth Amendment, and Section 1, the Fourteenth Amendment to the United States Constitution.

CONSTITUTION AND APPROPRIATE STATUTES

A. This case involves the following constitutional provisions:

1. The First Amendment to the United States Constitution.
2. Section 1, the Due Process Clause of the Fifth Amendment to the United States Constitution.
3. Section 1, the Fourteent Amendment to the United States Constitution.

B. This case involves the following statutory provisions:

1. 28 U.S.C., Sections 1331 (a), 1332 (a)(1), 1343 (3), 1346 (a)(2)(b), 1402 (b), 2201, and 2674.
2. 42 U.S.C. 1983.

These constitutional and statutory provisions are set forth in Appendix attached hereto as Exhibit "D".

STATEMENT OF THE CASE

The Respondent, the United States of America, on the night of September 30, 1962, sent onto the campus of the University of Mississippi, at Oxford, Mississippi, the Respondents. Nicholas deB Katzenbach, James P. McShane, John Doe and Richard Roe, and other unknown

Respondents, U. S. Deputy Marshals and U. S. Border Patrolmen, who surrounded the Lyceum Building on the campus. That subsequent thereto, because of the actions of the Respondents, a riot broke loose. Subsequently, the Petitioner, together with his date, was crossing out of the range of the Respondents, when some six to eight U. S. Deputy Marshals and/or U. S. Border Patrolman, broke from the line surrounding the Lyceum Building, and attacked the Petitioner and his date, when he had asked them and begged them not to do so. They fired tear gas at and upon him and his date, causing them to be nauseous, vomiting, and his date to become hysterical. The Petitioner, because of the above related incidents, brought action in the United States District Court for the Southern District of Mississippi for a denial of his constitutional rights under the First Amendment, the Fifth Amendment and the Fourteenth Amendment to the United States Constitution.

The Petitioner, Cyril T. Faneca, Jr., seeks recovery for damages for the deprivation of his constitutional rights by the Respondents, The United States of America, Nicholas deB Katzenbach, James P. McShane, and unknown Respondents, as result of their acts upon the campus of the University of Mississippi, at Oxford, Mississippi, on September 30, 1962.

Proceedings Below

The Petitioner, Cyril T. Faneca, Jr., filed his suit in the United States District Court for the Southern District of Mississippi, against the United States of America, Nicholas deB Katzenbach, James P. McShane, John Doe, Deputy United States Marshal, Richard Roe, United States Border Patrolman, and other unknown Respondents, for "* * * declaratory judgment and damages for the denial

of his constitutional rights * * *", "* * * under the freedom of speech and peaceful assembly clause of the First Amendment; the right not to be denied liberty without due process under the Fifth Amendment to the Constitution of the United States, and the right not to be denied due process of law under the Fourteenth Amendment."

The Petitioner, Cyril T. Faneca, Jr., sets forth his claims in four counts:

COUNT 1

Count 1 sets forth the claim under the Federal Torts Claim Act (28 U.S.C. 1346 (a)(2)(b)) against all of the Defendants, under the First Amendment, the Fifth Amendment, and the Fourteenth Amendment, that the Defendants all "* * * acting in the scope of their employment * * * did wrongfully and negligently provoke or create a riot or disturbance by the wrongful and negligent and firing into the crowd, tear gas and/or other riot gas projectiles, upon the wrongful and negligent command of the Defendants, the United States, Katzenbach and McShane."; that "* * * the Defendants, John Doe, United States Deputy Marshal and other unknown Marshals and Richard Roe, United States Border Patrolman, and other Border Patrolmen, without warning or provocation did wrongfully and in a negligent manner, charge toward the Petitioner, and after having been pleaded with and begged by the Petitioner not to do so, did wrongfully and negligently fire at or upon the Petitioner certain tear gas or other type of gas projectiles."; that "* * * said United States Deputy Marshals and United States Border Patrolmen were immature, nervous or unseasoned * * *"; that "the direct and the sole proximate cause of the Defendant's acts were to injure and damage the Petitioner, by denying the Petitioner's constitutional right to freedom of speech and did unlaw-

fully and illegally deny the Petitioner's constitutional right to peacefully assemble, without unlawful and illegal harassment and molestation; did unlawfully and illegally deny him the right to life and liberty without due process of law, and did deny the Plaintiff the equal protection of the laws."

COUNT 2

Count 2 sets forth the claim absent the Federal Torts Claim Act (28 U.S.C. 1346 (a)(2)(b)), that all of the Defendants did, in violation of the First Amendment, Fifth Amendment, and the Fourteenth Amendment, under 42 U.S.C. 1983, the same acts as complained of above, "* * * acting under color of law, regulations and instructions of the Defendants, The United States of America, Katzenbach, McShane, did willfully, intentionally and purposely deprive the Petitioner of his constitutional right to peacefully assemble under the First Amendment; did willfully, intentionally and purposely deprive and deny under the Fifth Amendment, his right not to be deprived of life and liberty without due process of law; did willfully, intentionally and purposely deprive the Petitioner of his constitutional rights under the Fourteenth Amendment to due process of law, to life, liberty, and due process of law and equal protection of the laws, by charging the Petitioner, after having been pleaded and begged by the Petitioner not to do so, did willfully, intentionally and purposely fire at, or upon the Petitioner certain tear gas and/or other type of gas projectiles, to intentionally, willfully and purposely deny the Petitioner's constitutional rights heretofore set forth."

COUNT 3

Count 3 sets forth the claim absent the Federal Torts Claim Act (28 U.S.C. 1346 (a)(2)(b)) and constitutional

deprivations, of diversity of citizenship suit for damages for the acts of the individual Defendants, which acts were done in a gross, negligent and wrongful manner, and which acts were set out in detail in Counts 1 and 2.

COUNT 4

Count 4 is a claim similar to Counts 1 and 2 under the Federal Torts Claim Act.

The Petitioner, Cyril T. Faneca, Jr., demanded damages for the deprivation of his constitutional rights in the amount of $40,000.00.

The Respondents filed their motion to dismiss this cause for lack of venue, jurisdiction, and for summary judgment on November 14, 1962. The United States District Court on February 6, 1963, overruled the objection to venue and deferred the jurisdictional questions as well as the motion for summary judgment until the hearing of the merits of the case, by Memorandum Opinion, and entered its Order to this effect on February 14, 1963. The Respondents then filed their motion to reconsider, and the United States District Court overruled this motion to reconsider, by memorandum and order dated April 1, 1963. Interrogatories were requested by the Petitioner, Cyril T. Faneca, Jr., requesting the names of all of the governmental personnel used on the campus of the University of Mississippi, on September 30, 1962. This motion was filed on May 10, 1963, and the names of the various governmental personnel were furnished to the Petitioner, Cyril T. Faneca, Jr., without argument or resistance on behalf of the Respondents. The Petitioner, Cyril T. Faneca, Jr., then moved under Rule 34, FRCP, for production of pictures, description of the individual unknown Respondents; then on June 13, 1963, the Respondents, without resistance

or argument furnished some of the pictures and information of the unknown individual Respondents. The Respondents again on July 22, 1963, moved for summary judgment and for reconsideration of the Court's prior order of deferring the question of summary judgment, and the United States District Court, by Order of September 24, 1963, denied all relief and certified its order for interlocutory appeal, under 28 U.S.C. 1292 (b).

The majority of the Court of Appeals for the Fifth Circuit reversed the United States District Court for the Southern District of Mississippi asserting that the United States was not a party under the Federal Torts Claim Act (28 U.S.C. 1346 (b)) as the actions complained of by the Petitioner were exempt under 28 U.S.C. 2680 as a discretionary function or duty and exempt under 28 U.S.C. 2680 (h) as the acts of the Respondents were assault and battery. Judge Gewin concurred with respect to the nonliability of the United States under the Federal Torts Claim Act, but dissented with regard to the constitutional allegations of the Petitioner, for the reasons stated in his dissent in the case of *Norton et al.* v. *McShane et al.*, No. 20722, which dissents are attached in Exhibits "A" and "B" in the Appendix.

REASONS FOR GRANTING THE WRIT CERTIORARI

Writ Certiorari to review the final orders of the United States Court of Appeals for the Fifth Circuit in this case should issue be caused:

1. The United States Court of Appeals for the Fifth Circuit has decided an important question of Federal Law which has not been, but should be, settled by this Court.

2. The United States Court of Appeals for the Fifth Circuit has decided a question in a way in conflict with the applicable decisions of this Court.

These two grounds for granting of a Writ Certiorari by this Court are so interrelated that discussions under both reasons should be discussed jointly.

I

The majority concludes that the United States[1] is not liable under the Federal Torts Claim Act as the claim against the United States falls within the excepted ambit of 28 U.S.C. 2680 (a)[2] as interpreted through *Dalehite* v. *United States*, 1952, 346 U.S. 15, and 28 U.S.C. 2680 (h).[3]

A serious reading of the *Dalehite* case,[4] *supra*, clearly shows its inapplicability. In the *Dalehite* case,[5] *supra*,

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1. The majority makes no mention of liability of the individual Defendants under Count 1, although such Defendants are indispensable parties to the Federal Torts Claim Act. Nor does the majority or Appellants raise the issue on appeal of proper venue, and thus such is waived. Cf. *Dick* v. *New York Life Ins. Co.*, 1960, 359 U.S. 437, 79 Sup. Ct. 921, 3 L. Ed. 2d 935.

2. "The provisions of this chapter and section, 1346 (b) of this title shall not apply to—

(a) Any claim * * * based upon the exercise of performance of the failure to exercise or perform a *discretionary function or duty on the part of a federal* agency or an employee of the government, whether or not discretion involved be abused." (Emphasis added).

3. "The provisions of this chapter and section 1346(b) of this title shall not apply to—

(h) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights."

4. 346 U.S. 15.

5. *Ibid.*

the United States, by virtue of a discretionary Act of Congress, was in the business of exporting FGAN fertilizer overseas when the chemical compound exploded in Texas City, Texas. The United States Supreme Court noted that the United States was under no duty to enter into the fertilizer program, but the Act passed by Congress allowing the United States to get into the fertilizer business was purely a *discretionary act* as the United States, under the TVA Program,[6] got into the fertilizer business purely on an experimental basis, and after World War II, by act of the President's Cabinet, decided to institute the fertilizer export to Germany and Japan under the Marshall Plan. Further, the Court considered no questions of constitutional rights as presented here for decision.

On the other hand, the protection of life, liberty and due process, as well as affording the equal protection of the laws, are not *discretionary* governmental functions as these are *constitutional guarantees,* placed in the Constitution of the United States, whereby the United States guarantees the performance of the United States to insure the protection of life, liberty, freedom of speech, assembly, and due process. This is clearly shown in the case of *Logan* v. *U. S.*, 1892, 142 U.S. 263, 12 Sup. Ct. 617, 36 L. Ed. 429,[7] where Logan and others, United States Marshals, were indicted under Sections 5508 and 5509 of the Revised Statutes (18 U.S.C. 241, 242) for conspiracy to deprive persons of their civil rights, and for murder of citizens of the United States. The Supreme Court made the following

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6. 16 U.S.C. 831 (d).

7. The decision of *Logan* v. *U. S.*, 142 U.S. 263, 12 Sup. Ct. 617, 36 L. Ed. 429, has lost none of its vitality but has been in force and expanded under the Supreme Court's decisions in *Screws* v. *U. S.*, 1944, 325 U.S. 91, 65 Sup. Ct. 1031, 89 L. Ed. 1495, and *Monroe* v. *Pape*, 1962, 365 U.S. 167, 81 Sup. Ct. 473, 5 L. Ed. 2d 492.

ruling (144 U.S. 263, 283-284, 12 Sup. Ct. 617, 36 L. Ed. 429, 436):

> *"The United States, having the absolute right to hold such prisoners, had an equal duty to protect them, while so held, against assault of injury from any quarter.* The existence of that duty on the part of the government necessarily implies a corresponding right of the prisoners to be so protected; and this right of the prisoners is a right secured to them by the Constitution and Laws of the United States.
>
> * * *
>
> (144 U.S. 264, 294, 12 S. Ct. 617, 36 L. Ed. 429, 440) *"In the case at bar, the right in question does not depend upon any of the amendments to the Constitution, but arises out of the creation and establishment of the Constitution itself of a national government, paramount and supreme within its sphere of action. Any government which has the power to indict, try and punish for crime, and to arrest the accused and hold them in safekeeping until trial, must have the power and duty to protect against unlawful interference of its prisoners so held, as well as its executive and judicial officers charged with keeping and trying them."*
>
> * * *
>
> (144 U.S. 264, 295, 12 S. Ct. 617, 36 L. Ed. 429, 440) *"The United States are bound to protect against lawless violence all persons in their service or custody in the courts of the administration of justice.* This duty and the correlative right of protection are not limited to the magistrates and officers charged with expounding and executing the laws, but apply, with at least equal force, to those held in custody on accusation of crimes, and deprived of all means of self-defense." (Emphasis added)

The majority's misconception of the Petitioner's Claim 1 under the Federal Torts Claim Act is exposed by its holding "* * * that the tort plaintiff is complaining of is

in essence assault and battery, and his allegations of negligence are not sufficient to avoid Section 2680 (h)". The allegations here are not negligence, but a constitutional denial, and where there is an allegation of a constitutional denial under the Federal Torts Claim Act, the majority cannot engraft into the exceptions under 28 U.S.C. 2680 (h) that which clearly appears from the act itself was not intended, as the express mention of one excluded those not enumerated.[8] Expressed provisions of statutes are not to be annuled by mere implications.[9] Where a legislative body has made a grant with a specific limitation, and has made no other limitation, the conclusive presumption arises that it is intended to make no additional limitations,[10] and the majority point us to no legislative history which conclude that the Federal Torts Claim Act was not set up for the purposes of redressing constitutional denials.

II

Under Court 2 of the Complaint of the Petitioner, Cyril T. Faneca, Jr., the allegations set forth that the Petitioner is entitled to damages for denial of his constitutional rights absent the Federal Torts Claim Act, against all of the Petitioners for denial of his constitutional rights under the Civil Rights Act (42 U.S.C. 1983).[11]

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8. *Collins* v. *Russell*, 1940, 114 F.2d 334, and *City of Tulsa* v. *Midland Valley R.R. Co.*, 1948, 168 F.2d 252.

9. *Braffith* v. *People of the Virgin Islands*, 1938, 26 F.2d 636.

10. *Wabash R.R. Co.* v. *U. S.*, 1910, 178 Fed. 5.

11. The pertinent part of 42 U.S.C. 1983, provides as follows:

"Every person, who, under color of any statute or ordinance, regulation, custom or usage of any state or territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to

The majority, relying upon the case of *Barr* v. *Matteo*, 1959, 360 U.S. 564, concludes that judicial, legislative, and executive officers are immune from suits as the claims asserted by necessity set forth that the acts done were beyond their "scope of authority". Further, the majority concludes that 42 U.S.C. 1983, relying upon the case of *Gregoire* v. *Biddle*, 2nd Cir. 1949, 177 F.2d 579, does not apply to federal officers, but applies solely and alone to state officers for acts done "under color" of any state statute, ordinance, regulation, or custom.

It was first recognized that a political body can act only through its judicial, executive, and legislative bodies, and then *only by natural persons*, who, when acting under color of authority, but actually beyond such authority, were in fact acting on behalf of their political bodies when denying another his constitutional rights. This was first recognized in the case of the *Commonwealth of Virginia* v. *Rives*, 1873, 100 U.S. 315, 25 L. Ed. 667, and has been restated in a recent case of *U. S.* v. *Classic*, 1944, 313 U.S. 299, 326, 61 Sup. Ct. 1031, 1943, 85 L. Ed. 1368, where the Supreme Court held as follows:

> "Misuse of power, possessed by virtue of * * * law and made possible only because the wrong-doer is clothed with authority of * * * law, is action taken 'under color of' * * * law."

All of the Respondents were upon the campus of the University of Mississippi at Oxford, Mississippi, not as invites, but under "color of law" of the orders of the United States Court of Appeals for the Fifth Circuit and The United States District Court of the Southern District of Mississippi.

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the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action of law, suit in equity, or other proper proceedings or redress."

Since, therefore, it is not the issue of acting within the "scope of employment" but whether the individual was acting under "color of law", there is left for consideration whether 42 U.S.C. 1983 applies to federal officers as well as state officers.

The Supreme Court, in the case of *Screws* v. *U. S.*, 1944, 325 U.S. 91, 65 Sup. Ct. 1931, 89 L. Ed. 1495, was wrestling with the constitutionality of Section 20 of the Criminal Code, which is presently 18 U.S.C. 242, and which section was originally derived from the Revised Statutes 5509 and 5510 which, in turn, were part of the original Force Acts of 1871, which civil counterparts, enacted at the same time, are presently the Civil Rights Act (42 U.S.C. 1983 and 1985). Section 20 of the Criminal Code was attacked as being too broad and nebulous to set forth a standard of guilt for a crime. The Supreme Court, speaking through Mr. Justice Douglas, held that the Court must in all instances find the statute constitutional, if possible, and the Court would do so by a narrow construction, holding that the accused negro in the custody of the sheriff was denied his constitutional right to due process of law, because the accused was killed and thus not allowed a criminal trial.

The Supreme Court, in addressing itself to the questions of what officials were held guilty of violation of constitutional rights under "color of law", held as follows (325 U.S. 91, 108, 65 Sup. Ct. 1031, 89 L. Ed. 1495, 1506):

> *"Some arguments which have been advanced in support of the contrary conclusions suggest that the question under Section 20 is whether Congress has made it a federal offense for a state officer to violate the law of his state. But there is no warrant for the treating of the question in state law terms.* The problem is not whether state law has been violated but whether

> an inhabitant of a state has been deprived of a federal right by one who acts under 'color of any law'. *He who acts under 'color' of law may be a federal officer or a state officer. He may act under 'color' of federal law or state law.* The statute does not come into play merely because the federal law or the state law under which the officer purports to act is violated. It is applicable when and only when someone is deprived of a federal right by that action. The fact that it is also a violation of a state law does not make it any the less a federal offense punishable as such. Nor does its punishment by federal authority encroach on state authority or relieve the state of its responsibility to punish its state offenses." (Emphasis added.)

To reach the conclusion that federal officers are likewise responsible for acting under "color of law", Mr. Justice Douglas relied upon the case of *Logan* v. *U. S., supra.*

The majority rests its conclusion that acts under "color of law" and immunity of suit by the Respondents ends with the case of *Gregoire* v. *Biddle,* 1949, 2nd Cir., 177 F.2d 579. However, the trail does not terminate at this juncture, for Judge Hand, speaking for the United States Court of Appeals for the Second Circuit, specifically recognized that immunity of officers does not apply with regard to claims under the Civil Rights Act (42 U.S.C. 1983).

Here is the language of the Court (177 F.2d 579, 581):

> "The decision upon which the Plaintiff relies (Picking v. Pa. Rr. Co., 3rd Cir., 151 F.2d 240) indeed holds that the doctrine of absolute immunity for official acts does not cover claims arising under (section) 43 of the Civil Rights Act; * * *."

The immunity trail does end with the recent decision of *Monroe* v. *Pape,* 1962, 365 U.S. 167, 5 L. Ed. 2d 492, 81 Sup. Ct. 473, and the decision in *Nesmith* v. *Alford,* 1963,

318 F.2d 110, which cases were cited by the Petitioner, but were not considered by the majority.

In the case of *Monroe* v. *Pape, supra* (365 U.S. 167, 5 L. Ed. 492, 81 Sup. Ct. 473), a negro brought suit against the City of Chicago, Illinois, and various policemen, sheriffs, justices of the peace, state's attorney, and several John Doe state officers, under 42 U.S.C. 1983, for invasion of his home, and subsequent search without a warrant, arrest and detention without a warrant and without arraignment. The United States District Court dismissed the suit on the ground that the complaint alleged no cause of action under 42 U.S.C. 1983, or under the Federal Constitution because of the individual defendants' official capacity and common law immunity. The Supreme Court, speaking through Mr. Justice Douglas, reversed the lower court and held that the invasion of the home of the plaintiff without a search warrant, the arrest and detention without a warrant, and without arraignment, constituted deprivation of constitutional rights of the petitioner under 42 U.S.C. 1983, as the police officials were acting under "color of law" and thus swept aside any defense immunity. Mr. Justice Douglas, in reaching such conclusion on behalf of the United States Supreme Court, relied upon his previous decision in *Screws* v. *U. S., supra* (325 U.S. 91, 89 L. Ed. 1495, 65 Sup. Ct. 1031), and held that the same interpretation of acts under "color of law" under 18 U.S. 241 and 242, applied with like force to 42 U.S.C. 1983. Here is the language of the Court (365 U.S. 167, 187, 81 Sup. Ct. 473, 5 L. Ed. 2d 492, 505):

> "*We conclude that the meaning given 'under color of law' in the Classic Case and in the Screws Case and Williams Case was the correct one; and we adhere to.*
>
> "In the Screws Case we dealt with the statute that imposed criminal penalties for acts 'willfully' done.

> We construed that the word in its setting to mean the doing of an act with a 'specific intent to deprive a person of a federal right'. 325 U.S. at 103. *We do not think that gloss should be placed on Section 1979* (42 U.S.C.A. 1983) *which we have here.* The word 'willfully' does not appear in Section 1979. Moreover, Section 1979 provides a civil remedy, while in the Screws Case, we dealt with a criminal law challenged on the ground of vagueness. Section 1979 *should be read against the background of tort liability that makes a man responsible for the natural consequences of his* actions." (Emphasis added.)

In the case of *Nesmith* v. *Alford*, 1963, 318 F.2d 110, the Fifth Circuit had an occasion to determine whether or not the imposition of absolute immunity could be used as a defense by a police officers in the arrest of individuals claiming to have a civil right under the First Amendment of freedom of speech and assembly. The Court swept aside the defense of immunity, wedding itself to *Monroe* v. *Pape, supra* (365 U.S. 167, 81 Sup. Ct. 473, 5 L. Ed. 2d 492) using the following language (318 F.2d 110, 124-125):

> "Certainly since Monroe v. Pape, 191, 365 U.S. 167, 187, 81 Sup. Ct. 473, 5 L. Ed. 2d 492, violation of some of the Civil Rights of these Plaintiffs was *established as a matter of law. These included the freedom from unlawful arrest, freedom of speech and freedom of association.* * *"*

> "It is equally clear *that the personal accountability of each of the three officer defendants was established as a matter of law with respect to some of* these violations." (Emphasis added.)

The majority points to none, and our research fails to divulge that there is any justification for sweeping away the immunity of state police officers when they violate the civil rights of a complaint under the Constitution of the

United States, but would grant immunity to federal officers for the same acts.

"In view of our decision that the Constitution prohibits the (state officers from imposing the defense of immunity), it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government", to paraphrase the words of Mr. Chief Justice Earl Warren.[12] The justification for granting immunity would certainly run in favor of the state official, for he is called upon by far more to enforce the laws, regulations, and ordinances of both the city, county, state, and nation, as opposed to the few specifically enumerated duties of the United States Marshal.

CONCLUSION

We respectfully pray for the foregoing reasons that this Court grant this Petition for Writ Certiorari and review the final orders entered by the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

EDWARD L. CATES,
CARTER AND MITCHELL,
P. O. Box 2216,
Jackson, Mississippi,
Attorneys for Petitioner.

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12. *Boling* v. *Sharpe*, *supra*, 347 U.S. 947, 500, 74 Sup. Ct. 693, 98 L. Ed. 884, 887.